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- (2) Perform any other functions, duties, and responsibilities assigned to it by the Board of County Commissioners or by general or special law.

(b) All meetings of the local planning agency shall be public meetings, and agency records shall be public records.

(c) The director of the planning department shall serve as the chair of the local planning agency, and the planning department shall provide the local planning agency with staff assistance and support.

(Code 1971, § 17.1-42; Ord. No. 90-32, § 3, 7-16-90)

**Secs. 10-33–10-50. Reserved.**

**ARTICLE III. BOARD OF ADJUSTMENT  
AND APPEALS\***

**Sec. 10-51. Appointment.**

(a) There is hereby created the Tallahassee Leon County Board of Adjustment and Appeals which shall consist of three members appointed by the Board of County Commissioners and three members appointed by the city commission and a seventh member whose position shall alternately be appointed by the city and the county.

(b) The terms of members of the board of adjustment and appeals shall be three years. The terms shall extend from July 1 in the year in which the appointment is made. Vacancies may be filled at any time for the unexpired term of a member by the appropriate governmental unit. Absence of any member from three consecutive meetings of the board, unless approved by the chairman shall, at the discretion of the governmental unit making the appointment, render any such member liable for immediate removal from office by the governmental unit having made the appointment.

(Ord. No. 76-8, §§ 1, 2, 3-16-76; Ord. No. 92-10, § 2(8.3(A), (B)), 3-10-92)

\*Cross reference—Boards, authorities, commissions and similar agencies, § 2-46 et seq.

**Sec. 10-52. Powers and duties.**

The board of adjustment and appeals shall have the following powers and duties under the zoning, housing, building, plumbing, gas and fire prevention codes of the city and the county:

(1) *Appeals.* To hear and decide appeals as set out in section 10-55.

(2) *Variations and modifications.* To hear and decide variations and modifications as set out in section 10-56.

(3) *Additional powers.* The board of adjustment and appeals shall perform such additional duties as may by ordinance be delegated to it, and which pertain to the above assigned powers.

(Ord. No. 76-8, § 3, 3-16-76; Ord. No. 92-10, § 2(8.3(C)), 3-10-92)

**Sec. 10-53. General procedure.**

(a) The board of adjustment and appeals shall elect a chairman from its membership, appoint a secretary and adopt rules for the conduct of its affairs and procedures not inconsistent with the provisions of law. The board shall hold regular meetings at least once in each calendar month. Special meetings may be held upon the call of the chairman or upon the written request of any two members of the board. The chairman, or in his absence, the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public. The board shall keep minutes of its proceedings showing the vote of each member upon each question or if absent or failing to vote, indicating such fact, and shall keep record of its examinations and other official actions which shall be immediately filed in the office of the board.

(b) No provisions in this article shall be construed so as to require the board to be strictly bound by the rules of evidence in the review of any matters that may be considered.

(Ord. No. 76-8, § 6, 3-16-76; Ord. No. 92-10, § 2(8.3(D)), 3-10-92)

**Sec. 10-54. Quorum.**

Four members of the board of adjustment and appeals shall constitute a quorum and shall be necessary to conduct business or take any official action; and a majority vote of those members present shall be required to grant a variance or to reverse or to modify an order, requirement, decision or determination of an administrative official. No board member shall act in any case in which he has a personal interest.

(Ord. No. 76-8, § 7, 3-16-76; Ord. No. 92-10, § 2(8.3(E)), 3-10-92)

**Sec. 10-55. Appeals.**

(a) Whenever it is claimed that the true intent or meaning of any of the codes referred to in this article or any of the regulations contained therein or promulgated thereunder have been misconstrued or wrongly interpreted, the owner or his duly authorized agent may appeal from the decision of the administrative officer of the code involved to the board of adjustment and appeals. Notice of appeal shall be in writing and filed within 30 days after the decision is rendered by the responsible administrative officer under the code.

(b) In case of a building or structure which in the opinion of the responsible administrative officer is unsafe or dangerous, he may in his order limit the time for such appeal in the public interest to a shorter period.

(c) Appeals hereunder shall be on forms provided by the Tallahassee-Leon County Planning Department.

(d) In any appeal to the board, due notice of the public hearing shall be given at least ten days in advance of the hearing by publication in a newspaper of regular and general circulation in the city and county. In cases affecting 30 or less contiguous parcels of land, additional written notice shall be mailed to the current address of each property owner involved, as shown in the records of the property appraiser and to owners of property within 200 feet of the parcel which is the subject of the appeal.

(Ord. No. 76-8, § 4, 3-16-76; Ord. No. 92-10, § 2(8.3(C)), 3-10-92)

**Sec. 10-56. Variations and modifications.**

(a) The board of adjustment and appeals, when appealed to and after a hearing, may vary the application of any provision of the codes identified in this article to any particular case when, in its opinion, the enforcement thereof would do manifest injustice, owing to special or unique circumstances peculiar to the property and would be contrary to the spirit and purpose of the code or to the public interest.

(b) A variance is hereby defined as a relaxation of the terms of the code or ordinance involved where such variance will not be contrary to the public interest, and, where owing to conditions peculiar to the property and not the result of the actions of the applicant, a literal enforcement of the code involved would result in an unnecessary or unique hardship. As used in the zoning code, establishment or expansion of a use otherwise prohibited shall not be allowed by variance nor shall a variance be granted because of the presence of nonconformities in the zoning district or adjoining districts. As further defined for the purpose of the zoning code a variance is authorized only for the area and size of structure or size of yards or open spaces, or parking regulations.

(c) A decision of the board of adjustment and appeals to vary the application of any provision of the codes or to reverse or modify an order, requirement, decision or determination of an administrative official shall specify in writing in what manner such variation or modification is made, the conditions upon which it is made, including, but not limited to safeguards and the reasons for the variance.

(d) Any variance granted shall be deemed to be applicable to the affected land in perpetuity, except as provided in section 10-58, regardless of ownership.

(Ord. No. 76-8, § 5, 3-16-76; Ord. No. 92-10, § 2(8.3(C)), 3-10-92)

**Sec. 10-57. Decisions.**

(a) Except as otherwise provided in this article, every decision of the board of adjustment and appeals shall be final; subject, however, to such remedy as any aggrieved party might have at law

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or in equity. The decision shall be in writing and shall indicate the vote. Every decision shall be promptly filed with the county administrator, or designee, and shall be open to public inspection; a copy shall be sent by mail or otherwise to the appellant or applicant.

(b) The board shall in every case reach a decision without unreasonable or unnecessary delay. In no case may the board fail to render a decision on an application within five days after the final hearing thereon. Any continuance of a final hearing in which the applicant shall be allowed to submit additional information to the board shall be by public hearing and with notice to the public as directed by the board. The board may waive the applicant's fee for the costs of renotification.

(c) If a decision of the board reverses or modifies a decision, order, requirement or determination of an administrative official, or varies any provision of the code involved, the affected administrative official shall immediately take action in accordance with such decision.

(Ord. No. 76-8, § 8, 3-16-76; Ord. No. 92-10, § 2(8.3(F)), 3-10-92)

**Sec. 10-58. Time limits.**

(a) In granting any variance, the board of adjustment and appeals may establish an expiration date for the variance granted.

(b) Any variance granted shall expire within one year from the date of the grant unless a permit based upon and incorporating the variance is issued within the one-year period, and substantial construction has begun thereunder. Failure to meet both permitting and construction requirements within the one-year period shall cause such variance to become void.

(Ord. No. 76-8, § 9, 3-16-76; Ord. No. 92-10, § 2(8.3(G)), 3-10-92)

**Sec. 10-59. Filing fees.**

(a) No request for a variance shall be filed with the board of adjustment and appeals until a filing fee has been paid and such filing fee shall not be refundable.

(b) No request for an appeal of an administrative decision shall be filed with the board of adjustment and appeals until a filing fee has been paid and such fee shall not be refundable.

(c) Fees shall be established by resolution of the Board of County Commissioners.

(Ord. No. 76-8, § 10, 3-16-76; Ord. No. 81-56, § 1, 12-15-81)

**Sec. 10-60. Establishment of a rights determination process.**

(a) *Applicability.* Any person who alleges that the Bradfordville Commercial Area Overlay District, either facially or as applied, interferes with a pre-existing vested right, a lawful, nonconforming use, a right established by equitable estoppel, development agreement rights, a deprivation of due process, a violation of equal protection, a taking of property, an impairment of the obligation of contract, or under any provision of the Florida Constitution or the Bert J. Harris Act (hereinafter "rights") and asserts such rights in any judicial proceeding for equitable or declaratory relief, mandamus, certiorari, damages, or compensation pursuant to law, whether in state or federal court shall first be required to present a claim, pursuant to paragraph (a) below to the Director of the Department of Community Development (hereinafter "director") for a determination of whether such claim shall be granted in whole or in part. If the director determines that granting such claim in whole or in part will substantially interfere with the nature and concept of the Bradfordville Sector Plan Commercial Area, alternative relief may be granted by the director by way of compensation, variance, cluster, or other appropriate relief, provided that compensation or transfer of development rights shall only be permitted upon the approval of the Board of County Commissioners. No judicial proceedings on such claim shall be commenced or shall be ripe until this final determination has been exhausted. The Director shall act upon such claim within 30 days from the date of filing of a completed application. The rights determination process does not permit modifications to any part of this chapter other than the provisions of the Bradfordville Commercial Area Overlay District.

(b) *Application.*

- (1) The owner shall request a determination of the claim by filing a technically complete, sworn application and the application fee with the Department of Community Development within 90 calendar days of July 18, 2000, upon a form to be provided for that purpose, setting forth the following information:
  - a. The name and address of the applicant, who shall be the owner or a person authorized to apply on behalf of the owner; if the property is owned by more than one person, any owner or an authorized agent of the owner may apply.
  - b. A legal description and survey of the property which is the subject of the application.
  - c. The name and address of each owner of the property.
  - d. A site or development plan or plat for the property.
  - e. Identification by specific reference to any matters upon which the applicant relied and which the applicant believes to support the applicants case.
  - f. A statement of facts which the applicant intends to prove in support of the application.
- (2) Failure to timely file an application requesting a determination within the prescribed time limits shall constitute a waiver of any such claim by the owner of the property in any judicial proceeding brought to enforce such claim through certiorari, mandamus, injunctive, equitable, legal, declaratory, damages, or compensatory relief.
- (3) The Board of County Commissioners shall establish an application fee by resolution and such application fee shall be included with the application for a determination of rights.

(c) *Review of application.* The Department of Community Development shall screen the application to determine whether it is technically complete. Technically incomplete applications shall be returned to the applicant with written notification of deficient items not provided. Upon accepting a technically complete application, for which the application fee has been submitted, the director shall review the application and make a final determination within 30 calendar days whether or not the application clearly and unequivocally asserts a valid claim for relief and written notification of the decision shall be sent to the applicant.

(d) *Appeals.*

- (1) Purpose. It is the purpose of this section to provide an administrative process for appealing decisions rendered by the director. It is intended that such administrative relief be provided in the most professional, objective, and equitable manner possible through the Board of Adjustment and Appeals. No party shall be deemed to have exhausted its administrative remedies for the purpose of seeking judicial review unless the party first obtains a determination of the director and proceeds through the appellate process with the Board of Adjustment and Appeals, if an appeal has been filed.
- (2) Filing for appeal. The procedure for filing an appeal shall be as follows:
  - a. Appeals shall be commenced by any interested or intervening party with standing filing a notice of appeal with the Director and the Clerk of the Board of Adjustment and Appeals within 15 calendar days of the date of the written determination of the director.
  - b. The notice of appeal shall set forth in detail the basis of the appeal.
  - c. The decision of the director shall be stayed, pending the final determination of the appeal.
  - d. Within 15 days of the hearing, the Board of Adjustment and Appeals

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shall prepare written findings and a decision; copies of the findings and decision shall be mailed to each party to the appeal and to the director.

(3) Conduct of the hearing. Conduct of the hearing before the Board of Adjustment and Appeals shall be as follows:

- a. The Board of Adjustment and Appeals shall set forth at the outset of the hearing the order of the proceeding and the rules under which the hearing will be conducted.
- b. The order of presentation at the hearing shall be as follows:
  1. Receipt of the written determination from the Director.
  2. Opening statement by the parties.
  3. Appellant's case.
  4. Respondent's case.
  5. Rebuttal by appellant.
  6. Summation by respondent.
  7. Summation by appellant.
  8. Conclusion of the hearing by the Board of Adjustment and Appeals.
- c. The record of the director, including all exhibits, shall be received and constitute a part of the record.
- d. The Board of Adjustment and Appeals shall have the authority to determine the applicability and relevance of all materials, exhibits and testimony and to exclude irrelevant, immaterial or repetitious matter.
- e. The Board of Adjustment and Appeals is authorized to administer oaths.
- f. A reasonable amount of cross-examination of witnesses shall be permitted.
- g. The time for presentation of a case shall be determined by the Board of Adjustment and Appeals.

- h. The Board of Adjustment and Appeals may allow the parties to submit written findings of fact and conclusions of law following the hearing, and shall advise the parties of the timetable for so doing, if allowed.

(4) Judicial Review. Judicial review of the Board of Adjustment and Appeals' decision is available to the property owner and the county and shall be by common-law certiorari to the circuit court within 90 days of the filing and mailing of the decision. In any case where judicial review is sought, the decision of the Board of Adjustment and Appeals shall be stayed pending the final determination of the case.

(Ord. No. 00-31, § 6, 7-11-00)

*Editor's note*—Ord. No. 00-31, § 6, adopted July 11, 2000, did not specifically amend this Code. Hence, the provisions of said ordinance section was included as § 10-60 at the request of the county. See the Code Comparative Table.

**Secs. 10-61—10-75. Reserved.**

**ARTICLE IV. COMPREHENSIVE PLAN**

**Sec. 10-76. Adopted.**

The Tallahassee-Leon County 2010 Comprehensive Plan as adopted and amended by the county is adopted.

**Sec. 10-77. Appeals of consistency determinations.**

(a) Determinations of consistency with the comprehensive plan as determined by the planning department, may be appealed by the applicant to the county consistency review committee. The membership of the consistency review committee shall be established by a separately adopted resolution by the Board of County Commissioners, which may be amended from time to time by further resolutions. Such appeals shall be submitted in writing to the planning director not later than ten calendar days following the determination by the planning department.

(b) The procedures for review by the consistency review committee shall be established within bylaws to be adopted by the committee. All decisions of the consistency review committee with regard to consistency determinations shall be final and binding on all parties, subject only to appropriate judicial review.

**Secs. 10-78—10-95. Reserved.**

## ARTICLE V. VESTED RIGHTS REVIEW

### DIVISION 1. GENERALLY

#### Sec. 10-96. Definitions.

As stated in section 10-1, the definitions in section 10-1 apply to this article. The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Building permit* shall not include a foundation permit.

*Development* shall mean the particular development activity authorized by the unexpired development order issued for a specific project.

*Director* shall mean the Tallahassee-Leon County director of planning or his designated representative.

*Final development orders* shall mean for purposes of a determination of vested rights in a previously-approved development, the following unexpired development orders:

- (1) Exempt subdivision.
- (2) Minor subdivision.
- (3) Preliminary subdivision plat approval.
- (4) Final subdivision plat approval.
- (5) Final site plan approval (pursuant to article VIII).
- (6) Approval of a PUD concept plan.
- (7) Approval of a PUD final development plan.
- (8) Building permit.

- (9) Any other development order which approved the development of land for a particular use or uses at a specified intensity of use or uses and which allowed development activity on the land for which the development order was issued.

*Lot of record* shall mean a designated parcel, tract or area of land established by plat, metes and bounds description, or otherwise permitted by law, to be used, developed or built upon as a unit and which existed in the records of the county property appraiser upon the effective date of the county's subdivision regulations, January 1, 1984.

(Ord. No. 90-31, § II, 7-16-90)

**Cross reference**—Definitions and rules of construction generally, § 1-2.

#### Sec. 10-97. Statement of intent.

This article establishes the sole administrative procedures and standards by which a property owner may demonstrate that private property rights have vested against the provisions of the comprehensive plan. Such administrative procedures shall provide determinations for the consistency of development with the densities and intensities set forth in the comprehensive plan and that development is not subject to the concurrency requirements of the comprehensive plan.

(Ord. No. 90-31, § I, 7-16-90)

#### Sec. 10-98. Vested categories.

The following categories shall be presumptively vested for the purposes of consistency with the comprehensive plan and concurrency as specified in the comprehensive plan and shall not be required to file an application to preserve their vested rights status:

- (1) All lots within a subdivision recorded as of July 16, 1990, or lots in approved unrecorded subdivisions for which streets, stormwater management facilities, utilities and other infrastructure required for the development have been completed as of July 16, 1990. The planning department shall maintain a listing of such exempt subdivisions.